

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Norang Lal & Another Vs. State of Rajasthan
(D.B. Criminal Appeal No.137/2001)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C.
against the judgment dated 8-2-2001 in Sessions Case
No.32/2000 passed by Shri Yashpal Singh, RHJS,
Additional Sessions Judge No.1, Sikar.

Date of Judgment: April 13, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Govind Sharma, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Norang Lal and Ramavtar, the appellants herein, along with Sumitra Devi and Laxmi Devi were put to trial before the learned Additional Sessions Judge No.1, Sikar. Learned Judge vide judgment dated February 8, 2001 while acquitting Sumitra Devi and Laxmi Devi convicted and sentenced the appellants as under:-

Ramavtar:

U/s.302 IPC:

To suffer imprisonment for life and fine of Rs.10000/-, in default to further suffer simple imprisonment for three months.

U/s.341 IPC:

To suffer rigorous imprisonment for six months.

Norang Lal:

U/s.341 IPC:

To suffer rigorous imprisonment for six months.

U/s.302/34 IPC:

To suffer imprisonment for life and fine of Rs.10000/-, in default to further suffer simple imprisonment for three months.

The substantive sentences were ordered to run concurrently.

2. The prosecution case as unfolded during trial is as under:-

On July 31, 2001 at 10.15 AM informant Bhajni (Pw.4) handed over a written report to SHO Police Station Raghunathgarh at SK Hospital Sikar to the effect that on the preceding day around 7.30 PM while her husband Lal Chand was returning from Dhani of Jagdish to their Dhani, he was waylaid by Norang Lal, Ramavtar, Sumitra, Laxmi and Jagannath. Norang Lal and Jagannath inflicted blows with Gandasi whereas Ramavtar gave blow with spear on the person of Lal Chand. When the informant made attempt to intervene she was also beaten up. Lal Chand was removed to hospital where he died. On that report a case under sections 147, 148, 149, 323, 341 and 302 IPC was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No.1 Sikar. Charges under sections 341, 323, 302 and 302/34 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 9 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. One witness in defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard the submissions and weighed the material on record.

4. Death of Lal Chand was indisputably homicidal in nature. Vide Post Mortem Report (Ex.P-21) following ante mortem injuries were found on the dead body:-

1. Lacerated wound 2 x 2 x 1cm on back of right elbow.
2. Abrasion 2cm x 1cm on back of left elbow.
3. Incised wound 4cm x 2cm x 1cm on left leg above ankle laterally.
4. Incised wound 2cm x 1cm x 1cm above injury no.3 on left leg.
1. Lacerated wound 5 x 3 x bone deep upper aspect of skull
2. Lacerated wound 3cm x 2cm x bone deep on occipital region.

In the opinion of Dr. Vivekanand Goswami (Pw.21) the cause of death was shock and coma due to head injuries which resulted in fracture of upper aspect of skull.

5. A look at the material on record demonstrates that after the incident occurred on July 30, 2000 at 7.30 PM Lal Chand was immediately taken to the hospital but his injuries were not examined. Lal Chand died on July 31, 2000. It also appears that report of the incident had been lodged with the Police Station Kotwali Sikar just after the incident but the said report was withheld. Vijendra (Pw.3) deposed thus:

"हमने रात को ही पुलिस को रिपोर्ट कर दी थी, मैंने कोतवाली सीकर में जाकर रिपोर्ट की थी..."

6. Further perusal of record goes to show that deceased Lal Chand was quarrelsome person and he was involved in many cases. Satbir (Pw.1)

stated as under:-

"लालचन्द शराबी था, झगडालु था उसके कई केसेज अब भी चल रहे हैं। उसने अपने पिता का घर भी जला दिया, गांव में एक माली का घर भी जला दिया।"

7. Bhagirath, real brother of deceased, (Pw.2) deposed in his cross examination thus:-

"उसकी लगी चोटों का इलाज नहीं होने से वह मर गया। लालचन्द तो बेहोश ही रहा था इसलिए हमें कुछ भी नहीं बताया..."

8. Vijendra (Pw.3) stated that Ramavtar thrusting spear into the head of Lal Chand. रामावतार ने लालचन्द के सिर में भाला घुसेड दिया Dr. Mohd. Farookh (Pw.5) however stated that injuries on the head shown in the post mortem report (Ex.P-21) could not be caused by thrusting spear into the head. He deposed thus:-

"धारदार भाला सिर पर नोक के बल घुसेडने पर Ex.P-21 में दर्ज सिर की चोटें नहीं आ सकती"

9. On analysing the evidence adduced at the trial following fact situation emerges:-

- (i) Delay in lodging the report could not be explained.
- (ii) Report had already been lodged just after the incident but the said report was not produced.
- (iii) After Lal Chand was admitted to the hospital, he was not given proper treatment.
- (iv) Lal Chand at the time of incident was under the influence of liquor.

(v) The prosecution could only able to establish that only one injury was caused by accused Ramavtar.

(vi) Accused Norang Lal had shared common intention with Ramavtar.

(vii) Incident occurred all of sudden and the accused did not take undue advantage of the situation.

10. The origin and genesis of the occurrence although could not be brought on record, it is however established that Ramavtar inflicted one blow on the head of deceased Lal Chand and did not repeat the same. The incident occurred all of sudden and on a spur of moment and Ramavtar did not act in cruel or unusual manner. He did not take undue advantage of the situation. It can however be presumed that Ramavtar had knowledge that the blow inflicted by him was likely to cause death of Lal Chand, even though he had no intention of causing death or such bodily injury as is likely to cause death. Therefore the accused Ramavtar is held guilty under section 304 Part II IPC. The accused Norang Lal who had shared common intention with Ramavtar is found guilty under Part II of Section 304 read with 34 IPC.

11. For these reasons, we partly allow the appeal and instead of section 302 we convict appellant Ramavtar under section 304 part II IPC. Appellant Norang Lal instead of section 302 read with 34 stands convicted under section 304 part II read with 34 IPC. Since both the appellants have already suffered confinement for a period more than six years and five months, the ends of justice would be met in sentencing them to the period already undergone by them in confinement. We however acquit the appellants of the charge under section 341 IPC. The appellants Ramavtar and

Norang Lal, who are in jail, shall be set at liberty forthwith, if they are not required to be detained in any other case.

The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J.

(Shiv Kumar Sharma)J.

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